

IC 35-37-2

Chapter 2. Trial Proceedings

IC 35-37-2-1

Preliminary instructions

Sec. 1. The court shall give the jury preliminary instructions.
As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-2

Order of trial; statement of case; presentation of evidence; arguments of counsel; instructions

Sec. 2. After the jury is impaneled and sworn, the trial shall proceed in the following order:

- (1) The prosecuting attorney shall state the case of the prosecution and briefly state the evidence by which he expects to support it, and the defendant may then state his defense and briefly state the evidence he expects to offer in support of his defense.
- (2) The prosecuting attorney shall then offer the evidence in support of the prosecution, and the defendant shall then offer the evidence in support of his defense.
- (3) The parties may then respectively offer rebutting evidence only, unless the court, for good reason and in furtherance of justice, permits them to offer evidence upon their original case.
- (4) When the evidence is concluded the prosecuting attorney and the defendant or his counsel may, by agreement in open court, submit the case to the court or jury trying the case, without argument. If the case is not submitted without argument, the prosecuting attorney shall have the opening and closing of the argument. However, the prosecuting attorney shall disclose in the opening all the points relied on in the case, and if in the closing he refers to any new point or fact not disclosed in the opening, the defendant or his counsel may reply to that point or fact, and that reply shall close the argument of the case. If the prosecuting attorney refuses to open the argument, the defendant or his counsel may then argue the case. If the defendant or his counsel refuses to argue the case after the prosecuting attorney has made his opening argument, that shall be the only argument allowed in the case.
- (5) The court shall then charge the jury. The judge shall:
 - (A) make the charge to the jury in writing;
 - (B) number each instruction; and
 - (C) sign the charge;

if, at any time before the commencement of the argument, he has been requested to do so by the prosecuting attorney, the defendant, or the defendant's counsel. In charging the jury, the court must state to them all matters of law which are necessary for their information in giving their verdict. The judge shall inform the jury that they are the exclusive judges of all questions of fact, and that they have a right, also, to determine the law. The court may send the instructions to the jury room.

(6) If the prosecuting attorney, the defendant, or the defendant's counsel desires special instructions to be given to the jury, these instructions must be:

- (A) reduced to writing;
- (B) numbered;
- (C) accompanied by an affixed cover sheet that refers to the instructions by number and that is signed by the party, or his attorney, who is requesting the special instructions; and
- (D) delivered to the court;

before the commencement of the argument. A charge of the court or any special instructions, when written and given by the court under this subdivision, may not be orally qualified, modified, or in any manner orally explained to the jury by the court. If final instructions are submitted to the jury in written form after having been read by the court, no indication of the party or parties tendering any of the instructions may appear on any instruction.

As added by Acts 1981, P.L.298, SEC.6. Amended by P.L.315-1985, SEC.1.

IC 35-37-2-3

Preliminary instructions; personal knowledge of material fact by juror; disclosure; examination; excuse of juror or panel

Sec. 3. (a) As a part of the preliminary instructions, the court shall instruct the jurors that if a juror realizes, during the course of the trial, that he has personal knowledge of any fact material to the cause, he shall inform the bailiff that he believes he has this knowledge at the next recess or upon adjournment, whichever is sooner. The bailiff shall inform the court of the juror's belief, and the court shall examine the juror under oath in the presence of the parties and outside the presence of the other jurors concerning his personal knowledge of any material fact.

(b) If the court finds that the juror has personal knowledge of a material fact, the juror shall be excused and the court shall replace that juror with an alternate. If there is no alternate juror, then the court shall discharge the jury without prejudice, unless the parties agree to submit the cause to the remaining jurors.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-4

Preliminary instructions; admonition by court; separation

Sec. 4. (a) The court shall admonish the jurors in the preliminary instruction, before separating for meals, and at the end of the day, that it is their duty not to converse among themselves or permit others to converse with them on any subject connected with the trial, or to form or express any opinion about the case until the cause is finally submitted to them.

(b) The jurors may separate when court is adjourned for the day, unless the court finds that the jurors should be sequestered in order to assure a fair trial.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-5

View by jury

Sec. 5. Whenever:

- (1) the court believes that it is proper; or
 - (2) a party to the case makes a motion;
- for the jury to have a view of the place in which any material fact occurred, the court may order the jury to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury is absent for this reason, no person, other than the officer and the person appointed to show them the place, may speak to the jurors on any subject connected with the trial.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-6

Retirement and deliberation of jury; officer in charge; restrictions

Sec. 6. (a) After hearing the charge, the jury shall retire to the jury room for deliberation. They shall retire under the charge of an officer, who shall be sworn by the court to:

- (1) keep the jury together in the jury room or other place ordered by the court;
 - (2) furnish them food as directed by the court; and
 - (3) not permit any person to speak or communicate with them.
- (b) An officer may not communicate with a juror except:
- (1) as provided in sections 2 and 4 of this chapter;
 - (2) to ask them if they have agreed on a verdict; or
 - (3) when ordered to do so by the court.

As added by Acts 1981, P.L.298, SEC.6.

IC 35-37-2-7

Verdict; rendering in open court; polling of jury

Sec. 7. When the jury has agreed upon its verdict, the officer having the jurors in his charge shall conduct them into court. If all jurors appear, their verdict must be rendered in open court. If all do not appear, the court shall discharge the jury without prejudice. The prosecuting attorney and the parties are entitled, in all criminal cases, to have the jury polled.

As added by Acts 1981, P.L.298, SEC.6.